

1 A. Okay.

2 Q. Have you ever seen this document before, marked
3 Exhibit 3?

4 A. Yes.

5 Q. Can you tell me what that is?

6 A. This document lists some questions that the
7 president, Takeshi, and Mr. Fukuda had with regard to
8 the new companies that had been created pursuant to the
9 instructions of the president.

10 Q. And the new companies that this is talking
11 about are the management companies; is that correct?

12 A. Yes.

13 Q. And Mr. Fukuda says that he discussed these
14 matters with the president and with Takeshi; is that
15 correct, at the top?

16 A. Yes.

17 Q. So there was -- according to number two, there
18 was a question about or a concern that your name was in
19 the public record for the management companies; is that
20 correct?

21 A. Yes.

22 Q. And it says something about wanting to avoid
23 having the Kinoshita name in the public record; is that
24 right?

25 A. Yes.

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1 properties of which we had no plans to sell.

2 Q. For all six properties, I think for Diamond
3 Head Beach Hotel, Queen Kapiolani, Ocean Resort and then
4 the three golf courses, do you remember what the total
5 for the termination fees was if, for example, you had to
6 pay them all, or Sports Shinko had to pay them all, do
7 you remember the grand total?

8 A. I believe it was either 3.5 million or
9 4.5 million.

10 Q. I think it's 3.5. I think that's right. So
11 Mr. Fukuda when he said he was going to, if the other
12 listed properties were sold, move those termination fees
13 to Mililani and Queen Kapiolani, what he meant by that,
14 as you understood it, was that that 3.5 million in
15 termination fees would be on only those two properties
16 or shifted into those two agreements with RMS; is that
17 right?

18 A. Well, I suppose so, however, looking at the big
19 picture, this was all hypothetical and was my
20 understanding that no matter what anybody else said, it
21 would ultimately be the president who would make the
22 call.

23 Q. As a hypothetical, even as a hypothetical, did
24 you think that seemed reasonable at that time to shift
25 all the termination fees for the other contracts to just

1 BY MR. MELCHINGER:

2 Q. So do you know if Mr. Fukuda or Mr. Kinoshita
3 asked Mr. Nishida to sign these contracts for RMS as
4 they were, without negotiation, for example?

5 A. I do not.

6 Q. Mr. Nishida had been an officer at some of the
7 Sports Shinko entities; is that right?

8 A. Yes.

9 Q. What was his relationship like, Mr. Nishida's
10 relationship, with the president?

11 A. Until the time that Mr. Nishida went off on his
12 own, their relationship was one of president/employee.

13 Q. Did Mr. Nishida ever do work specifically for
14 the president, either in Hawaii or in Japan, sort of as
15 a special executive assistant, for example?

16 A. A long time ago he used to be the secretary to
17 the president over in Japan.

18 Q. Do you know when that was, about?

19 A. Well, let's see, that was when I was still a
20 university student, so between, say, 1980 and 1985.

21 Q. So, I'm sorry, is that how long or that is
22 that -- well, do you mean for five years he was acting
23 as secretary; is that right?

24 A. I don't recall exactly as I sit here today, but
25 he did serve as secretary to the president for a few

1 years in or around that time frame. I don't recall how
2 many years it was.

3 Q. Did you have any discussion with either
4 Mr. Mukai, the president, or Mr. Fukuda about the legal
5 affect the RMS management agreements would have after
6 they were entered?

7 A. I did receive advice from Mr. Mukai.

8 Q. What was that advice?

9 A. I can recall a few things as I sit here today.
10 First of all, with regard to Mr. Nishida, Mr. Mukai
11 advised me that although Mr. Nishida was the president
12 of a small company, he nevertheless was now the
13 president of a separate and independent company and,
14 therefore, he had the full authority that that office
15 carries with it. And so I was told by Mr. Mukai that I
16 would need to forget the relationship that I once had
17 with Mr. Nishida, that of being me as vice president,
18 him as general manager, and I must now interact with him
19 as the president of a company, which he was, similar to
20 the way that Mr. Kinoshita was the president of our
21 company.

22 Q. Okay. Anything else? I think you said there
23 were a few things.

24 A. In addition, Mr. Mukai told me that since
25 Resort Management was a separate and independent company

1 A. Yes. Another purpose would have been that we
2 needed to delegate responsibility for the management to
3 someone because there was a plan for me to return to
4 Japan to work there.

5 Q. Okay. Anything else?

6 A. In addition to that, another purpose would have
7 been to enable me to focus more closely on the sale of
8 the business facilities.

9 Q. Okay. Is there any purpose as concerned either
10 Sports Shinko Japan's lenders, their lending banks for
11 RCC?

12 A. I have no knowledge -- excuse me, I don't know.
13 At all.

14 THE INTERPRETER: Let me clean that up. "I
15 don't know at all."

16 MR. MELCHINGER: What number are we on now?

17 THE REPORTER: We're on 27.

18 MR. MELCHINGER: Mark that 27, please.

19 (Exhibit 27 marked for identification.)

20 BY MR. MELCHINGER:

21 Q. Showing you what's been marked Exhibit 27 to
22 your deposition. After you've had a chance to look at
23 that, and particularly, the e-mail on the very top of
24 the first page, can you tell me whether you recognize
25 this?

1 MR. MELCHINGER: I'll clarify for the record, I
2 think this got copied with my star mark on there on the
3 right-hand column, so that's my mark.

4 THE WITNESS: Yes.

5 BY MR. MELCHINGER:

6 Q. So you recognize this e-mail?

7 A. Yes.

8 Q. Is this an e-mail that you sent to Mr. Fukuda
9 on or around January 16, 2001?

10 A. Yes.

11 Q. And does it report something about Mr. Mukai
12 and the president to Mr. Fukuda there in the second
13 paragraph?

14 A. Yes.

15 Q. And what is that? What did you report to
16 Mr. Fukuda?

17 A. Mr. Mukai's comments, his comments regarding
18 the affect of having created the management company.

19 Q. And what was that affect, according to
20 Mr. Mukai?

21 A. That it had made it extremely difficult for RCC
22 to lien the business facilities in Hawaii.

23 Q. By lien, you mean attach?

24 A. I'm not too sure of the technical expression
25 there.

1 THE INTERPRETER: Maybe I should clear this up,
2 there's many choices of words, right, and lien is an
3 attachment.

4 MR. MELCHINGER: Okay.

5 BY MR. MELCHINGER:

6 Q. And what was, as you understood it and you
7 reported it to Mr. Fukuda, what was the president's
8 reaction to Mr. Mukai's comment?

9 A. In this e-mail here, I was communicating to
10 Mr. Fukuda regarding the substance of a meeting between
11 Mr. Mukai and the president, things that they were
12 working on. So it's not that I was communicating this
13 to the president of the company. Rather, I was
14 reporting to Mr. Fukuda regarding Mr. Mukai and the
15 president.

16 Q. So the basis for this e-mail is a meeting
17 between Mr. Mukai and the president; is that right,
18 then?

19 A. Yes.

20 Q. Were you present at this meeting?

21 A. No.

22 Q. So how did you hear about this, afterwards?

23 A. Looking at this report, yes, that does appear
24 to be the case. Mr. Mukai and the president had a
25 meeting either in person or on the telephone and then

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1 subsequent to that, I had a meeting with Mr. Mukai at
2 which time he shared with me what had been discussed
3 between him and the president. And I, in turn here, was
4 reporting that to Mr. Fukuda.

5 Q. And as you noted, Mr. Mukai made a comment
6 about the affect of establishing the RMS, right, that
7 would make it hard to lien -- hard for RCC to lien the
8 Hawaii properties; is that right?

9 A. No. Actually, what Mr. Mukai communicated to
10 me was that president Kinoshita was extremely happy that
11 RMS had been established because it had made it
12 difficult for RCC to lien the Hawaii business
13 facilities, and Mr. Kinoshita apparently asked Mr. Mukai
14 to work on establishing some sort of similar arrangement
15 to the RMS arrangement in Japan.

16 Q. Was one of the purposes for the management
17 contracts and creating the management companies to make
18 it difficult for RCC to place liens on Hawaii
19 properties?

20 THE INTERPRETER: I'm sorry, can I have that
21 question one more time.

22 THE WITNESS: I had no idea about that. If you
23 look to the next paragraph under the paragraph that you,
24 Mr. Melchinger, have placed an asterisk next to, I go on
25 to write to Mr. Fukuda that if, in fact, it had become

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1 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

2 STATE OF HAWAII

3 -----
4 SPORTS SHINKO (USA) CO., LTD., a Delaware

5 Corporation; SPORTS SHINKO (MILILANI)

6 CO., LTD., a Hawaii corporation, et al.,

7 Plaintiff,

8 vs. Case No. 02-1-2766-11 (EEH)

9 RESORT MANAGEMENT SERVICES

10 (HAWAII), INC., a Hawaii corporation,

11 YASUO NISHIDA, SATOSHI KINOSHITA, et al.

12 Defendants.
13 -----

14
15 DEPOSITION OF SATOSHI KINOSHITA

16 (Volume I)

17
18 Taken on behalf of the Plaintiff at Alston Hunt Floyd &
19 Ing, 1001 Bishop St., ASB Tower, 18th Floor, Honolulu,
20 Hawaii 96813, commencing at 9:08 a.m., Tuesday, April
21 19, 2005, pursuant to Notice.

22
23 BEFORE: BARBARA ACOBA, CSR No. 412, RPR

24 Notary Public, State of Hawaii
25

1 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

2 STATE OF HAWAII

3 -----
4 SPORTS SHINKO (USA) CO., LTD., a Delaware

5 Corporation; SPORTS SHINKO (MILILANI)

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9 RESORT MANAGEMENT SERVICES

10 (HAWAII), INC., a Hawaii corporation,

11 YASUO NISHIDA, SATOSHI KINOSHITA, et al.

12 Defendants.
13 -----

14
15 DEPOSITION OF SATOSHI KINOSHITA

16 (Volume II)

17
18 Taken on behalf of the Plaintiff at Alston Hunt Floyd &
19 Ing, 1001 Bishop St., ASB Tower, 18th Floor, Honolulu,
20 Hawaii 96813, commencing at 9:04 a.m., Wednesday, April
21 20, 2005, pursuant to Notice.

22
23 BEFORE: BARBARA ACOBA, CSR No. 412, RPR

24 Notary Public, State of Hawaii
25

1 APPEARANCES:

2 For Plaintiff: GLENN MELCHINGER, Esq.
3 ALSTON HUNT FLOYD & ING
4 ASB Tower
5 1001 Bishop St., 18th Floor
6 Honolulu, Hawaii 96813
7

8 For Defendant SATOSHI KINOSHITA:

9 JOHN KOMEIJI, Esq.
10 WATANABE ING KAWASHIMA & KOMEIJI
11 First Hawaiian Center
12 999 Bishop St., 23rd Floor
13 Honolulu, Hawaii 96813
14

15
16 Also Present: STEVEN SILVER - Interpreter
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19
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21
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24
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C E R T I F I C A T E

STATE OF HAWAII)

CITY AND COUNTY OF HONOLULU)

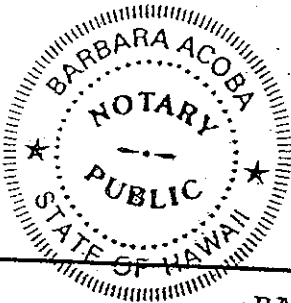
I, BARBARA ACOBA, Certified Shorthand
Reporter and Notary Public, State of Hawaii, do
hereby certify:

That on Wednesday, April 20, 2005, at
9:04 a.m., appeared before me SATOSHI KINOSHITA, the
witness whose deposition is contained herein; that
prior to being examined he was by me duly sworn;

That the deposition was taken down by me
in machine shorthand and was thereafter reduced to
typewriting under my supervision; that the foregoing
represents, to the best of my ability, a true and
correct transcript of the proceedings had in the
foregoing matter.

I further certify that I am not an attorney
for any of the parties hereto, nor in any way concerned
with the cause.

Dated this 30th day of April, 2005,
in Honolulu, Hawaii.



[Signature]
BARBARA ACOBA, CSR NO. 412

Notary Public, State of Hawaii

My Commission Exp: 10-22-2008

RALPH ROSENBERG COURT REPORTERS
Honolulu, Hawaii (808) 524-2090